RECENT IMPORTANT DECISIONS.

BANKRUPTCY—INSOLVENCY—INDEBTEDNESS AS SURETY OR INDORSER.—In determining the question of insolvency of an alleged bankrupt the court *held* that his liability as surety or indorser of a solvent principal, who is possessed of property amply sufficient to liquidate such indebtedness, is not to be counted as a "debt." *In re Bowers* (D. C. Ga. 1914), 215 Fed. 617.

No authorities were cited in the opinion—indeed, there appear to be none directly in point—yet the holding seems sufficiently consonant with principle and sound reasoning to stand unsupported by precedent. It is observable that were the court passing upon the provability of such a claim against the estate of one legally adjudged bankrupt, an entirely different situation would have been presented. Such a liability, becoming absolute after the filing of the petition, was held provable against the bankrupt in *Moch* v. *Market St. Bank*, 107 Fed. 897, but in view of the language of the Supreme Court in *Dunbar* v. *Dunbar*, 190 U. S. 340, 350, it is doubtful if such liability, not yet become absolute, could be considered as a provable claim. But even if it could, the court in the principal case has found a way out of the dilemma; if this liability is to be considered as a "debt" the surety still cannot be adjudged bankrupt unless proved insolvent within the meaning of § 1 (15) of the Bankruptcy Act, prescribing that "a person shall be deemed insolvent * * * when the aggregate of his property * * * shall not * * * be sufficient in amount to pay his debts." Such showing is impossible, because at the time the petition was filed the alleged bankrupt's principal (for whom he was surety) was perfectly solvent and amply able to pay the debt for which he was primarily liable; moreover a surety has a right to reimbursement from his principal, and this right—even though still inchoate—has been held to be a debt owing by the principal to the surety (*Hayer* v. *Comstock*, 115 Iowa 187; *Sweaney* v. *Baugher*, 166 Ind. 557; *Smith* v. *Wheeler*, 66 N. Y. Supp. 780, 55 App. Div. 170; but see contra, *Goding* v. *Roscenthal*, 180 Mass. 43; *Williams & Co.* v. *U. S. Guaranty Co.*, 11 Ga. App. 635.) Therefore if it be claimed that the alleged bankrupt is indebted on his undertaking as surety, he has, by virtue of that very fact, a right against his principal, and as his principal is solvent, this right is added to the assets of his estate, and he is still solvent.

BANKRUPTCY—PREFERENCE—PROCEEDS OF INSURANCE POLICY.—A corporation (subsequently adjudicated bankrupt) mortgaged its property to secure a part of its debt to the defendant company, and the trustee under the mortgage insured the property covered thereby, the policies being payable to the mortgage trustee. Part of the property was destroyed, and the value thereof was paid by the insurance companies to the mortgage trustee. On the order of the mortgagor the mortgage trustee turned over $15,000 of the insurance money to the defendant company to apply on its *unsecured* indebtedness; the remainder of the insurance money was applied on the mortgage

indebtedness, leaving a balance of about $15,000 still secured by the mortgage. The mortgagor was adjudicated bankrupt within two weeks of this application of the insurance money on the unsecured indebtedness, and its trustee in bankruptcy sues the defendant company to recover the $15,000 as a preference. *Held,* that the transaction was equivalent to a turning over of the money by the mortgage trustee to the mortgagor and a payment of it by the mortgagor to the mortgage creditor, and the amount was therefore recoverable as a preference. *Stearns Salt & Lumber Co.* v. *Hammond* (C. C. A. 6th Circuit, 1914), 217 Fed. 559.

The court refused to concede that the policies in question insured the mortgagee's interest exclusively, but took the view that inasmuch as the insurance was taken by virtue of the mortgage provision and at the expense of the mortgagor, the latter was entitled to its benefits to the extent of having its proceeds applied *pro tanto* to the liquidation of the mortgage debt, and equitably, at least, was entitled to whatever was collected above the amount necessary or desired to satisfy the claims of the mortgagee thereto; waiver by defendant of its paramount legal claim to the insurance money vested in the bankrupt absolute title and property therein, and the subsequent application of the portion now sought to be recovered to the defendant's unsecured claims was obviously a depletion of the bankrupt's estate to the advantage of a creditor. The conjunction of these two elements amounts to a preference. *New York County Nat. Bank* v. *Massey,* 192 U. S. 138, 147; *Newport Bank* v. *Herkimer,* 225 U. S. 178; *Continental & Commercial Trust & Savings Bank* v. *Chicago Title & Trust Co.,* 229 U. S. 435; *Dalrymple* v. *Hillenbrand,* 62 N. Y. 5, 11; *Claridge* v. *Evans,* 137 Wis. 218, 225; *In re Kerlin,* 209 Fed. 42, 44. But no preference results by a taking on the part of the creditor unless it be by virtue of a disposition by the insolvent debtor of his property for the creditor's benefit. *Western Tie & Timber Co.* v. *Brown,* 196 U. S. 502; *Rector* v. *City Deposit Bank,* 200 U. S. 405, 420. Here the bankrupt's consent to the application of the funds to the unsecured debt of the defendant is considered as such a "disposition."

CARRIERS—RIGHT OF PASSENGERS TO EQUAL FACILITIES.—The legislature of the State of Oklahoma passed in 1907 a law known as the "Separate Coach Law," which provided among other things that railroad companies doing business within the State should provide separate coaches and waiting rooms with equal facilities for negroes and white people; but further provided that the act should not be construed as preventing railroad companies "from hauling sleeping cars, dining cars, or chair cars, to be used exclusively by either white or negro passengers separately, but not jointly." *Held,* (1), That it was not an infraction of the Fourteenth Amendment to the United States Constitution for a State to require separate but equal accommodations for the two races; (2) but that the section relating to sleeping cars and dining cars was unconstitutional and void, in that it enabled the railroad companies, by authority of the State, to deprive a certain class of travellers of a constitutional right, the right to substantial equality of treatment when travelling under like conditions; further, that the discrimination could not